

FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN D. ELLIS,
RESPONDENT.

FINAL DECISION
AND ORDER
LS9409012REB

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 26th day of Jan. 1995.

Beechie O. Brooks

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST
JOHN D. ELLIS,
RESPONDENT.

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PROPOSED DECISION
Case No. LS-9409012-REB
(94 REB 186)

PARTIES

The parties in this matter under § 227.44, Stats., and § RL 2.037, Wis. Admin. Code, and for purposes of review under § 227.53, Stats., are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935

Respondent:

John D. Ellis
5115 W. Leroy Ave.
Greenfield, WI 53220

Disciplinary Authority

Real Estate Board
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Real Estate Board on September 1, 1994. A disciplinary proceeding (hearing) was scheduled for December 13, 1994. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on September 1, 1994 to John D. Ellis at his last-known address on file with the department. This notice was returned unclaimed. Notices sent to Mr. Ellis at three other addresses were also returned to the department; one was forwarded before its return to 3213 Road 26, Plantersville, Alabama (which is also the return address written by Mr. Ellis himself on exhibit 10). Two attempts at personal service by the sheriff of the county in which Plantersville is located were unsuccessful.

B. Mr. Ellis did not file an answer to the complaint within 20 days of service as required by administrative rule and as the notice informed him.

C. All time limits and notice and service requirements having been met under RL 2.08, Wis. Admin. Code, the disciplinary proceeding was held as scheduled on December 13, 1994. Mr. Ellis did not appear. The Real Estate Board was represented by Attorney Charles Howden of the Department's Division of Enforcement. The hearing was recorded. Attorney Howden moved that Mr. Ellis be found in default under RL 2.14, Wis. Admin. Code, and the motion was granted. The complaint along with the testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, John D. Ellis, is a real estate broker licensed in the state of Wisconsin, under license number 12848, which he has held continuously since it was originally granted on September 4, 1984.
2. Mr. Ellis' last address on file with the department is 5115 W. Leroy Ave., Greenfield, WI 53220. As of the date of the hearing, Mr. Ellis had not resided at that address for more than 30 days, and he failed to inform the Department of his new address.
3. During June 1994, Mr. Ellis caused advertisements to be placed in the Spooner Advocate, the Washburn County Register, and the Evergreen Shopping Guide, all distributed in and around Washburn County, Wisconsin. The advertisements indicated to the public that Mr. Ellis would act as a real estate broker under a "verbal listing agreement", and that such agreements would be "binding".
4. On or about July 18, 1994, Mr. Ellis caused an advertisement to be placed in the Evergreen Shopping Guide which stated in part

CANCEL LISTING CONTRACT

If your broker is handling your listing such that only 1% of buying public is aware your property is for sale -- you have a full and perfect right to terminate the contract.

It is time for laboring class to realize when richest people in community own the real estate offices and manipulate real estate such that 99% of property being sold is kept hidden from buying public -- the real estate industry is covered with the slime of corruption.

....

5. On or about July 24, 1994, Mr. Ellis caused an advertisement to be placed in The Scotsman, a shopper distributed in and around Washburn County, announcing his candidacy for sheriff and stating in part

Comes now big bang apocalypse and American laboring man's ultimate revolution in year 2000.

....

George Washington and his buddies were all killers and enslavers who created a war to start a dictatorship. Their blood descendants being killers and enslavers start many wars to sustain a dictatorship. This is not valid -- super rich, super lazy killers controlling a nation of laboring men.

Comes now this malignancy called "cancer of the contracts." From the U.S. Constitution contract that creates slavery to the real estate broker's contract that perpetuates slavery, from all this fraud and corruption shall laboring man be liberated.

6. During June 1994 Mr. Ellis entered into a verbal agency listing contract with Vern Boettcher for the sale of real estate in Shell Lake, Wisconsin. Mr. Ellis advertised this property in publications in and around Washburn County through his real estate agency known as "Buyer's Market".

7. During June 1994 Mr. Ellis entered into a verbal agency listing contract with Larry Walls for the sale of real estate in Minong, Wisconsin. Mr. Ellis told Mr. Walls that a handshake was all that was necessary for the creation of a listing contract. No written contract was ever created. Mr. Ellis advertised this property in publications in and around Washburn County through his real estate agency known as "Buyer's Market".

8. In approximately June of 1994, Mr. Ellis entered into a verbal agency listing contract with Ms. Judy Gunderson for property located in or near Washburn County. Mr. Ellis advertised this property in publications in and around Washburn County through his real estate agency known as "Buyer's Market".

9. On or about July 11, 1994, Ms. Gunderson received via United Parcel Service a letter addressed to her and signed by Mr. Ellis which states in part

Dear Judy,

Judy, Judy, Judy, bright, attractive and refreshingly cheerful. Comes now a discourse on things relevant, things hopeful, things pure and things true.

During our conversation you stated that your girl friend preferred married life but you did not understand why she felt that way. You enjoyed your freedom and had no desire to change. Comes now the response of an honest man trying to do an honest thing.

On the sixth day after creation, after God had created everything but Adam and Eve, a situation existed where God labored over nature

... For this reason did God create woman to be one-half the physical size and strength of man -- so that there would never be any question whatsoever that man was to "Rule over all the earth" without having to war with another race of equal human beings.

You and I now have a strictly business relationship that is strictly devoid of love. We are equal business partners with equal rights and equal burdens to serve and to receive equal compensation for service rendered [sic]. Equality here, equality there, equality-equality everywhere -- but no love anywhere.

...

Yours in truth and love,

[signed]

John, prophet to God Almighty

...

P.S. I hope your [sic] right about your dog being harmless, because if he ever bits [sic] me I will blow his brains out with a shotgun. I have a command from God and a natural instinct to kill any wild beast so vicious it would mutilate a child

Accompanying the letter were a one-page document entitled "Life Style for Men" on one side and "Life Style Modification Program" on the other, a one-page typed document entitled "Husband's Authority", and a copy of a six-page typed document entitled "Love Memo" dated July 7, 1994 to "Dave, Shawn, Chris" from "Dad". Although some of this material defies simple categorization, its purpose appears to have been to induce Ms. Gunderson to marry and accept a position of emotional dependence on Mr. Ellis. Ms. Gunderson knew Mr. Ellis only through the business relationship of listing her property for sale.

CONCLUSIONS OF LAW

- I. The Real Estate Board is the legal authority responsible for controlling credentials for Real Estate Brokers, under ch. 452, Stats. The Real Estate Board has jurisdiction over Mr. Ellis' license.
- II. The Real Estate Board has personal jurisdiction over Mr. Ellis under sec. 801.04 (2), Stats., based on notice mailed to his last-known address, as authorized by sec. RL 2.08, Wis. Admin. Code. In addition, Mr. Ellis holds a credential issued by the board, which is a substantial contact with the state of Wisconsin, regardless of whether he is physically present in the state.
- III. The Real Estate Board has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 440.03(1), Stats., sec. 452.14, Stats., and ch. RL 24, Wis. Admin. Code.
- IV. The respondent, John D. Ellis, is in default under sec. RL 2.14, Wis. Admin. Code. The Real Estate Board may make findings of fact and enter a disciplinary order on the basis of the complaint and the evidence presented at the hearing.
- V. By failing to notify the Department of Regulation and Licensing of a change of address within 30 days, Mr. Ellis violated sections RL 23.05 and RL 24.17 (3), Wis. Admin. Code, and sec. 440.11(1), Stats. This subjects Mr. Ellis to the imposition of a forfeiture of \$50, under sec. 440.11(3), Stats.

VI. By failing to draft and obtain written listing contracts for properties "listed" and advertised by his agency, Mr. Ellis violated sec. 452.14 (3) (m), Stats. His failure also violated sections RL 24.08 and RL 16.04, Wis. Admin. Code, thereby demonstrating incompetency to act as a real estate broker under sec. 452.14 (3) (i), Stats.

VII. By encouraging verbal listing contracts, by urging the cancellation of existing written contracts, and by inaccurately criticizing the legal requirement of written contracts in the practice of real estate, Mr. Ellis violated sections RL 24.03 (2) (c) and RL 24.04 (1), Wis. Admin. Code, thereby demonstrating incompetency to act as a real estate broker under sec. 452.14 (3) (i), Stats. These actions also constitute a continued and flagrant course of misrepresentation through advertising, contrary to sec. 452.14 (3) (d), Stats.

VIII. Mr. Ellis' communications with Ms. Gunderson on or about July 11, 1994 demonstrate incompetency to act as a real estate broker under sec. RL 24.01 (3), Wis. Admin. Code and sec. 452.14 (3) (i), Stats.

IX. The violations in VI, VII, and VIII above subject Mr. Ellis to the imposition of a reprimand or a revocation, suspension, or limitation of license, under sec. 452.13 (3), Stats., as well as the imposition of a forfeiture of up to \$1,000 for each violation and/or an education requirement as a condition of continued licensure, under sec. 452.14 (4m), Stats.

ORDER

THEREFORE, IT IS ORDERED that the license to practice as a Real Estate Broker issued to John D. Ellis be revoked, effective the date this order is signed on behalf of the Real Estate Board.

IT IS FURTHER ORDERED that John D. Ellis pay the costs of this proceeding, as authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code.

IT IS FURTHER ORDERED that John D. Ellis pay a forfeiture of \$50.

IT IS FURTHER ORDERED that the Division of Enforcement inform the licensing authority for real estate brokers in Alabama of this disciplinary proceeding and its outcome.

OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats., chapter 452, Stats., and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Real Estate Board alleging that the respondent, John D. Ellis, violated rules of professional conduct. Mr. Ellis is in default because he did not answer the complaint and he failed to appear at the hearing. This may be due partly to his failure to notify the department of a change of address, but the evidence in the record also strongly suggests that he is actively avoiding contact. A default can be treated as if the respondent admits all the allegations of the complaint, and this would be sufficient for the findings here. However, Mr. Howden presented testimony and exhibits in the hearing which bolster the findings, and I conclude that the allegations are true.

The Violations.

The disciplinary complaint in this matter alleged that the respondent violated numerous rules of professional conduct, which are stated in detail in the findings of fact and conclusions of law above. The following facts are not contested:

- During June 1994, Mr. Ellis advertised his services as a real estate broker in publications distributed in and around Washburn County, Wisconsin. The advertisements indicated to the public that Mr. Ellis would act as a real estate broker under a "verbal listing agreement", and that such agreements would be "binding". This is a misleading and inaccurate statement. Under the statutes and rules regulating real estate brokers, Mr. Ellis may not accept a verbal listing agreement.
- At least one of the ads also stated that a person would have "a full and perfect right to terminate" a listing contract with another broker, presumably to enter into a listing contract with Mr. Ellis. Though the accuracy of the phrase "a full and perfect right to terminate" may be subject to debate, it is certainly misleading in omitting the fact that a termination could subject a person to civil liability.
- During June 1994 Mr. Ellis did enter into verbal agency listing contracts with at least three individuals in or near Washburn County, Wisconsin. This clearly violates rules regulating brokerage practice.
- In July 1994, Mr. Ellis mailed a letter and other information to a female with whom he had a listing contract. Such an action does not directly violate any specific rule of professional conduct, but in the context of Mr. Ellis' other activities, I find it inappropriate and I find that it demonstrates incompetence to act as a real estate broker under Sec. RL 24.01 (3), Wis. Admin. Code, which says "the term 'incompetency' is not limited in its meaning to violations of this chapter".

Discipline.

The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5) and in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). In that case the Wisconsin Supreme Court stated "discipline for lawyer misconduct is not intended as punishment for wrongdoing; it is for the protection of the public, the courts and the legal profession from further misconduct by the offending attorney, to deter other attorneys from engaging in similar misconduct and to foster the attorney's rehabilitation." That reasoning has been extended by regulatory agencies to disciplinary proceedings for other professions.

The purposes of professional discipline listed above can be stated as a single goal, which is the protection of the public, both as individuals and as collective members of society. Discipline is directed to protecting those individuals who directly use the services of the professional, and protecting the institutions of society with which the professional interacts. To protect society, the disciplining authority must ensure, to the extent possible, that neither this individual nor any other member of the profession will repeat the behavior for which this professional is being disciplined.

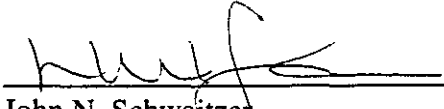
The types of activities Mr. Ellis engaged in justify an order for revocation. More importantly, his apparent lack of respect for this board and the law lead to the conclusion that revocation of his license is the only way to safeguard the public from further unprofessional conduct as a real estate broker. Unfortunately, this board has no authority to regulate his activities in any state other than Wisconsin, or in any area other than real estate, but I have recommended that the findings and orders in this case be transmitted to the licensing authority in Alabama, where he may be residing now.

Costs.

The assessment of costs against a disciplined professional is authorized by § 440.22(2), Wis. Stats. and § RL 2.18, Wis. Admin. Code. Mr. Ellis failed to notify the department of his change of address, he failed to cooperate in any way with the department in this action, and he failed to appear at the hearing. His lack of cooperation and disregard for these proceedings make an order for costs appropriate.

Finally, although the complaint includes Mr. Ellis' failure to notify the department of his change of address as an action justifying discipline, I cannot make that connection, and I find only that sec. 440.11, Stats. authorizes a forfeiture of \$50 for such a failure. Because a current address would have saved the department much time, effort, and aggravation, I consider such a forfeiture both punitive and appropriate.

Dated and signed: December 14, 1994



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN REAL ESTATE BOARD.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

JANUARY 27, 1995.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST
JOHN D. ELLIS,
RESPONDENT.

AFFIDAVIT OF COSTS OF
OFFICE OF BOARD LEGAL SERVICES
Case No. LS-9409012-REB

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.
3. The expenses for the Office of Board Legal Services are set out below:

a. Administrative Law Judge Expense @ \$26.29/hour.

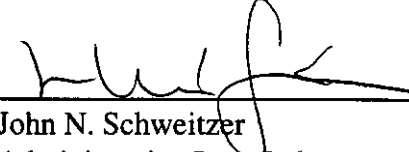
12/13/94 Hearing	2 hrs.
12/13/94 Work on proposed decision	2 1/2 hrs.
12/14/94 Work on proposed decision	2 3/4 hrs.

Total: 7 1/4 hrs. \$190.60

b. Reporter Expense

Attendance, 12/13/94 = \$75.00

Total allocable costs for Office of Board Legal Services = \$265.60


John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 13th day of Feb., 1994.


Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN D. ELLIS,
RESPONDENT.

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AFFIDAVIT IN SUPPORT
OF MOTION FOR COSTS
LS 9409012 REB

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Charles J. Howden, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties he worked as a prosecutor in the above-captioned matter; and

3. That set forth below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of business in the above-captioned matter:

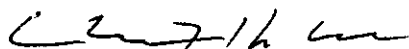
INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
Various during 1994	Investigation of complaint, including finding and interview of witnesses, review of documents drafting of summaries, assist in preparation of case.	60 hours
TOTAL INVESTIGATION TIME x \$20.00 per hour equals-----		\$1200.00

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
6/14/94	Screening, review of law, determine course of investigation and nature of summary proceeding	1.80 hours
6/30/94	Research re unauthorized practice and false advertising and agency	6.6 hours
8/1/94 to 8/24	Coordinate investigation and preparation of summary proceeding documentation	8.0 hours
8/25/94	Summary proceeding hearing and prep	4.0 hours

8/26/94	Prep complaint and notices	4.0 hours
9/28 to 10/4/94	Prep for discovery, review of documents subpoenas, correspondance, exhibits	10.00 hours
10/10 to 10/12/94	Discovery depositions Shell Lake, WI Six witnesses	18.00 hours
11/15/94 to 2/8/95	Prep for hearing and hearing and close file	16.00 hours
TOTAL ATTORNEY TIME x \$41.00 per hour equals:		\$2,886.40
ATTORNEY OUT-OF-POCKET EXPENSE		
10/11/94	Depositions	\$1,281.50
10/10-11/94	Travel expense	\$143.15
TOTAL ATTORNEY OUT OF POCKET EXPENSES:		\$1,424.65
TOTAL ASSESSABLE COSTS		5,511.05


 Charles J. Howden

Subscribed and sworn to before me
 this 8th day of February, 1995.


 Notary Public
 My Commission is Permanent.

CHH:dms
 WPPCHH-2